IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

WP(C).No. 26941 of 2005(G)

PETITIONER:

P. RADHA DEVI, MUSIC TEACHER,
MNKM HIGHER SECONDARY SCHOOL,
CHITTILANCHERRY, PALAKKAD.

BY ADV. SRI.P.SANTHOSH KUMAR (PANAMPALLI NAGAR)
SRI.LUIZ GODWIN D'COUTH

RESPONDENTS:

1. STATE OF KERALA REPRESENTED BY THE SECRETARY, GENERAL EDUCATION DEPARTMENT GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PUBLIC INSTRUCTION, THIRUVANANTHAPURAM.

3. THE DEPUTY DIRECTOR OF EDUCATION, PALAKKAD.

4. THE DISTRICT EDUCATIONAL OFFICER, PALAKKAD.

5. THE MANAGER, MNKM HIGHER SECONDARY SCHOOL, CHITTILANCHERRY, PALAKKAD.

6. THE PRINCIPAL/HEADMASTER, MNKM HIGHER SECONDARY SCHOOL, CHTTILANCHERRY, PALAKKAD.

7. SMT. K. GEETHA, MUSIC TEACHER, MNKM HIGHER SECONDARY SCHOOL, CHITTLANCHERRY, PALAKKAD.

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/08/2007 ALONG WITH CONTEMPT OF COURT CASE 1508/06, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: True copy of the representation submitted by the petitioner to the 4th respondent dated 17.6.1993.

Ext.P2: True copy of the representation submitted by the petitioner to the 3rd respondent dated 6.7.2002.

Ext.P3: True copy of the letter of the petitioner to the 5th respondent dated 18.6.2004.

Ext.P4: True copy of the representation submitted by the petitioner to the 2nd respondent dated 21.6.2004.

Ext.P5: True copy of the representation submitted by the petitioner to te 4th respondent dated 26.8.2004.

Ext.P6: True copy of the representation submitted by the petitioner to the 3rd respondent dated 26.8.2004.

Ext.P7: True copy of the letter of the 3rd respondent to the petitioner bearing No.B4/15781/04 dated 13.8.2004.

Ext.P8: True copy of the enclosed copy of the letter dated 31.3.2004 of the 3rd respondent dated 24.8.2004.

Ext.P9: True copy of the representation submitted by the petitioner to the 2nd respondent's representative dated 6.10.2004.

Ext.P10: True copy of the order of the 2nd respondent bearing No.D.DIS.84029/03/RA(3) dated 14.10.2004.

Ext.P11: True copy of the representation submitted by the petitioner to the 4th respondent dated 26.11.2004.

Ext.P12: True copy of the representation submitted by the petitioner to the 5th respondent dated 19.12.2004.

Ext.P13: True copy of the letter of the 4th respondent to the 3rd respondent bearing No.B5/9491/04 dated 8.1.2005.

Ext.P14: True copy of the recalling order issued by the 3rd respondent No.B3/17435/04 dated 18.2.2005.

Ext.P15: True copy of the letter of the petitioner to the 6th respondent dated 23.2.2005.

Ext.P16: True copy of the letter of the 6th respondent No.H/370/05 dated 23.2.2005 to the 3rd respondent.

Ext.P17: True copy of the representation submitted by the petitioner to the 6th respondent dated 25.2.2005.

Ext.P18: True copy of the proceedings of the 4th respondent No.D.Dis.B5/4705/04 dated 16.8.2004.

Ext.P19: True copy of the proceedings of the 4th respondent No.D.Dis.B5.5083/05 dated 8.8.2005.

Ext.P20: True copy of the order of the DEO, Palakkad No.B5/9491/04 dated 31.10.2005.

Ext.P21: True copy of the order in W.P.(C)No.19604/05 of the Hon'ble High Court of Kerala dated 23.8.05.

Ext.P22: True copy of te G.O.(RT)No.2003/05/G.Edn. Dated 17.5.2005.

Ext.P23: True copy of the judgment in O.P.No.7841/03-H of the Hon'ble High Court of Kerala dated 24.8.2004.

Ext.P24: True copy of the judgment in W.A. No.1847/05 in W.P.(C) No.19604/05 dated 23.8.2005.

Ext.P25: True copy of the appointment order of Smt.P.T.Thressia, Needle work Teacher, MNKM HS, Chittilancherry dt.29.7.1987.

RESPONDENT'S EXHIBITS:

Ext.R7(e): True copy of the order No.D.Dis.B5-4349/06 of the Dist.Edl.Officer.

Ext.R7(f): True copy of the G.O.(P)No.189/2005/G.Edn. Of the Government.

// True copy //

P.A. To Judge

jes

A.K.BASHEER, J.

W.P.(C)No.26941 of 2005

&

Contempt Case (C) No.1508 OF 2006

Dated this the 6th day of August, 2007

JUDGMENT

These two cases are being disposed of by this common judgment, since the issues involved in them are closely interrelated.

2. The writ petitioner who is also the petitioner in the Contempt of Court Case was appointed as a Music teacher in the Upper Primary Section of MNKM Higher Secondary School in the academic year 2004-2005 whereas respondent no.7 was appointed as a Music teacher in the High School section in the year 1992. It is not in dispute that both the appointments had been approved by the department. While the two teachers were continuing in the two sections of the school under the management of respondent no.5, there arose a division fall and both the posts of Music teachers had to be converted as part-time. However, they were allowed to continue on clubbing arrangement on rotation basis. To make

a long story short, it need only be mentioned that when the issue was brought up before the Director of Public Instruction, it was ordered that since one post of music teacher in High School section was allowed to be continued and since the periods available under the Art group are sufficient to sanction one specialist post, one post of eligible music teacher be retained under protection in the school. The District Educational Officer was directed to issue appropriate consequential orders in this regard. True copy of the said order issued by the Director on October 14, 2004 is on record as Ext.P10. Subsequently, Ext.P14 order was issued by the Deputy Director of Education on February 18, 2005 in the light of the request made by the District Educational Officer. In the said order, the Deputy Director issued a direction to recall the petitioner to her parent school after cancelling the redeployment. Grievance of the petitioner in this writ petition is that the manager has not so far complied with the above direction.

3. In the counter affidavit filed by respondent no.7, it is admitted that she is junior by almost ten years to the petitioner. However, it is contended by her that she was appointed in High School Section whereas petitioner was appointed in Upper Primary Section. It is pointed out by respondent no.7 that consequent to Ext.P14 order issued by the Deputy Director referred to above, the District Educational Officer had issued Exts.P18 and P19 fixation of staff order in the school in the academic year 2004-2005 and 2005-2006 respectively by which it was found that both the petitioner and respondent no.7 could continue in the school without any threat of deployment.

4. Petitioner has filed the Contempt of Court Case aggrieved by the above action of the department. The contention of the petitioner is that the manager had to accommodate her immediately when Ext.P14 order was issued and the action of the department was in fact an attempt to interfere with the administration of justice.

Anyhow, I do not propose to deal with that issue any further, in view of the order the I propose to pass in these two cases.

5. It is submitted by learned counsel for the manager and respondent no.7 that the apprehension of the petitioner that her seniority will be ignored is totally misconceived and without any basis. Since 2004-2005 petitioner had been continuing in the school whereas respondent no.7 had been working as a part time teacher on clubbing arrangement. It is further submitted by learned counsel for the manager that petitioner's position will never be threatened, particularly in view of the amendment to rule 6(b) of Chapter XXIII of Kerala Education Rule, in the year 2005. He further submits that if in the eventuality of any one of the teachers being faced with the threat of retrenchment, it will only be respondent no.7 who would be retrenched since she is admittedly the junior. In other words, it is made clear by the manager that petitioner's position will never be under threat, particularly in view of the amendment because she was appointed after

1979 and her appointment was also approved. In that view of the matter, I do not deem it necessary to deal with the other contentions raised by the petitioner or respondent no.7 and it is also not necessary to refer to the other orders of the department.

Writ petition and the Contempt of Court Case are closed recording the submissions made on behalf of the manager.

A.K.BASHEER, JUDGE

jes